

REMARKS

The claims that had been objected to in the Office Action have been placed in independent form, including the limitations of the base claim and all intervening claims. Claims 46, 49, 52, 54, 55 and 57 have been amended to include the limitations of claim 1. Claim 1 has been amended to include the limitations of claims 2 and 3. As a result, Applicants believe that the pending claims are in condition for allowance.

In order to simplify this case in this Amendment After Final, Applicants have canceled without prejudice claims 19-44, which had previously been withdrawn in accordance with the restriction requirement of July 11, 2003. Applicants intend to pursue those claims in divisional applications.

To the extent that it is not necessary to address particular items within the Office Action in order to provide a complete response, Applicants' choice not to discuss such items is not, and cannot be interpreted as, acquiescence by the Applicants to such items, nor does it or can it be construed during prosecution of this patent application or in any later administrative or judicial action to limit the scope of any claims that may eventually issue in this patent application or any patent application claiming priority to this one.

35 U.S.C. §112

Claim 5 has been amended to depend from claim 57, in order to provided antecedent basis for the phrase "said anvil."

35 U.S.C. §102

MPEP 2131 quotes Verdegaal Brothers v. Union Oil of California, 814 F.2d 628, 631 (Fed. Cir. 1987) for the legal standard of anticipation: "A claim is anticipated only if each and

every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” (emphasis added).

Claims 1, 2, 8, 13, 14, 16, 48, 50, 51, 53, and 56

Claim 1 has been amended to include the limitations of claims 2 and 3, which the Office Action stated to be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims. Claims 2 and 3 have been canceled. Thus, claim 1 is believed to be in condition for allowance. Claim 1 is generic, and therefore upon allowance would be allowed as to all species identified in this application. Further, claims 6-18, 45, 47, 50, 51, 53 and 56 depend from claim 1, and thus are in condition for allowance under MPEP 608.01(n)(III).

Applicants point out for the record that U.S. Pat. No. 6,036,641 to Taylor (“Taylor”) does not disclose a shell. Rather, it discloses contact members 1 that are not shells, but rather flat or curved members for contacting the heart. (e.g., Figures 1, 4A; column 12, lines 18-26). Further, the open space 22 disclosed by Taylor is between two contact members 1, not within a shell.

35 U.S.C. §103

MPEP 706.02(j) states:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant’s disclosure. *In re Vaeck*,

947 F.2d 488, 20 U.S.P.Q. 1438 (Fed. Cir. 1991) (emphasis added).

Claims 6, 7, 10-12, 15, 17, 18 and 45

Claim 1 is believed to be in condition for allowance, as discussed above. Claims 6-18, 45, 47, 50, 51, 53 and 56 depend from claim 1, and thus are in condition for allowance under MPEP 608.01(n)(III).

Applicants point out for the record that the Office Action states that “slicing the distal end of the graft would prepare a straight, ‘clean’ edge at the end for proper attachment of the graft to the target vessel.” (Office Action, page 4). However, Applicants do not claim a straight or clean edge.

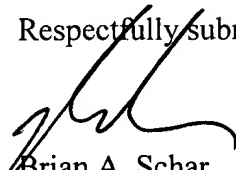
Further, the Office Action states that, among other things, “measuring the distance between a proximal anastomosis site and a distal anastomosis site” would be a matter of “design choice.” (Office Action, page 4). However, to one of ordinary skill in the surgical art, it is standard surgical practice to cut a graft vessel to a length at least as long as expected to be needed, where the surgeon determines that length by visually inspecting the graft. Enough extra length is allowed such that the graft is typically longer than required. After grafting one end of the graft vessel to a first target vessel, the other end of the graft is moved to the second target vessel. If the graft vessel is long enough that kinking may occur, the graft vessel is cut to a shorter length, and the portion of the graft that is cut away is discarded. The free end of the graft is then connected to the second target vessel. Thus, those skilled in the art do not measure the length of the graft.

REQUEST FOR ALLOWANCE

Allowance of the pending claims with regard to all species is respectfully requested.

Please contact the undersigned if there are any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'B. Schar', written over the printed name.

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